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March 10, 2003

Ms. Mattie C. Condray  
Senior Assistant General Counsel  
Office of Legal Affairs  
Legal Services Corporation  
750 First Street, NE  
Washington, DC 20002-4250

**Re: Limited English Proficiency Guidance - Request for Comments**

Dear Ms. Condray:

The National Asian Pacific American Legal Consortium (NAPALC) and its Affiliates the Asian Pacific American Legal Center in Los Angeles (APALC) and the Asian Law Caucus (ALC) in San Francisco work to advance the legal and civil rights of Asian Pacific Americans through litigation, public education and public policy. Joining NAPALC on these comments include the Asian Pacific American Legal Resource Center and the Organization of Chinese Americans, all of which advocated for the issuance and subsequent implementation of the Executive Order 13166 (EO), had provided extensive input and assistance to many federal agencies in the development of the policy guidances as required under the EO, and advocated against the repeal of the EO. For such reason, we are writing in regard to the Legal Services notice in the Federal Register concerning Limited English Proficiency Guidances. These comments urge LSC to develop guidance to assist local legal services programs in meeting their obligations under Title VI.

**UNDER TITLE VI RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE ARE PROHIBITED FROM DISCRIMINATING ON BASIS OF NATIONAL ORIGIN**

The premise of Title VI's incorporation of language as a form of national origin discrimination rests in the decision in Lau v. Nichols, 414 U.S. 563 (1974). In Lau, the Supreme Court held that a recipient of federal funding must ensure that language barriers did not exclude limited English proficient (LEP) individuals from effectively participating in its benefits and services. Although Lau involved education provided solely in English to both Chinese students who did not speak English and students who spoke English, the same urgency and necessity applies in the context of accessing any benefit or service of which a LEP individual is qualified to receive. Title VI represents this mandate and the EO serves to enforce it.

**AFFILIATES**  
*Los Angeles*  
Asian Pacific American  
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**FUNDS DISPERSED TO LSC GRANTEES ARE FEDERAL FINANCIAL ASSISTANCE AND ABSENT LANGUAGE TO THE CONTRARY MUST COMPLY WITH TITLE VI**

LSC in its Request For Comments questioned whether Title VI applies to LSC grantees and further added that “[t]here is no single answer to the question of the “Federal” nature of LSC funds; LSC funds are considered “Federal” funds for some purposes and “non-Federal” for others.” Limited English Proficiency Guidance—Request for Comments, 68 Fed. Reg. 1210, 1211 (Jan. 9, 2002 [sic]).

It is clear that Federal financial assistance is defined broadly under Title VI, which would include the assistance given to LSC grantees. The Department of Justice regulation states that Federal financial assistance includes:

- (1) Grants and loans of Federal funds, (2) The grant or donation of Federal property and interests in property, (3) The detail of Federal personnel, (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of The Civil Rights Act of 1964, 28 C.F.R. § 42.102(c) (2003).

Further, Federal funds which passed through from a recipient to a sub-recipient still retain the characteristics of the funds when originally authorized to the recipient.

- f) The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom **Federal financial assistance is extended, directly or through another recipient**, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of The Civil Rights Act of 1964, 28 C.F.R. § 42.102(f) (2003) (emphasis added).

LSC further states in its Request for Comments that:

The Legal Services Corporation (LSC) is a private, non-profit corporation created by Congress and funded through annual appropriations from Congress.

Limited English Proficiency Guidance—Request for Comments, 68 Fed. Reg. 1210 (Jan. 9, 2002 [sic]).

Given the definition of Federal financial assistance, the characteristics of the funds appropriated by Congress as those funds granted from a recipient to a sub-recipient, the source of LSC's funding from an annual appropriations from Congress, and the absence of any statutory language that state the appropriated funds to LSC are not Federal financial assistance for purposes of Title VI, means those funds disbursed to LSC grantees are Federal financial assistance and are required to comport with Title VI.<sup>1</sup>

**GUIDANCE SHOULD BE ISSUED BECAUSE LSC'S CORE MISSION IS TO PROMOTE EQUAL ACCESS TO THE SYSTEM OF JUSTICE AND IMPROVE OPPORTUNITIES FOR LOW-INCOME PEOPLE AND SUCH ISSUANCE IS NOT INCONSISTENT, BUT RATHER FURTHERS THAT MISSION BY ENSURING THAT LANGUAGE MINORITIES HAVE FULL ACCESS TO THESE SERVICES**

Regardless of LSC's final determination with respect to the characteristics of the funds appropriated from Congress, LSC should issue a Guidance. A Guidance is the most effective means for LSC to advise its recipients on how to best provide meaningful access in the legal services setting.

LSC's mission is "to promote equal access to the system of justice and improve opportunities for low-income people throughout the United States by making grants for the provision of high quality civil legal assistance to those who would be otherwise unable to afford legal counsel." *Limited English Proficiency Guidance—Request for Comments*, 68 Fed. Reg. 1210, 1210-11 (Jan. 9, 2002 [sic]). LSC in its 2000 budget stated that almost one in every five Americans is potentially eligible for LSC-funded services and that overall, two-thirds of legal services clients are women, most of them mothers with children. Legal Services Corporation Fiscal Year 2000 Budget Request at <http://www.lsc.gov/pressr/budgdocs/FY2000BR.doc> (visited on March 6, 2003). And more recently in its *Request for Comments*, LSC stated that its grantee client base has always been comprised of LEP persons. *Limited English Proficiency Guidance—Request for Comments*, 68 Fed. Reg. 1210, 1211 (Jan. 9, 2002 [sic]). The population served is similar, if not identical to the population that the state welfare agencies serve. For example, the very strong correlation between poverty rates and limited English proficiency is clearly illustrated by Los Angeles County's demographics: the API communities with the three highest LEP rates are Cambodian (72%), Vietnamese (66%), and Laotian (65%) – these same three communities also have among the highest poverty rates of any ethnic community in Los Angeles: Vietnamese (27%), Laotian (40%) and Cambodian (46%), compared to a 15% overall poverty rate. United Way of Greater Los Angeles, *Asian Pacific Factfinder of Los Angeles County*, 1996. Recent studies in the welfare context have shown that language is a significant barrier to accessing services. The 2001 Applied Research Center report on *Cruel and Unusual: How Welfare "Reform" Punishes Poor People* reported that over half of the respondents nationwide whose first language was not English reported that they needed translation but none was available. Rebecca Gordon, *Cruel and Unusual: How Welfare "Reform" Punishes Poor People* 35 (Applied Research Center 2001). In New York City, this figure was 70%. *Id.* The problem was most pronounced for speakers of Asian languages, 84% of whom had not had access to

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<sup>1</sup> LSC in its *Request for Comments* cite an example that LEP funds are considered non-Federal funds for the purpose of matching Title III funds under the Older Americans Act, but they are considered Federal funds for the purpose of a federal prosecution for theft or embezzlement under Title 18 of the U.S. Code. *Limited English Proficiency Guidance—Request for Comments*, 68 Fed. Reg. 1210, 1211 ft. note 2 (Jan. 9, 2002 [sic]).

translation when they needed it. *Id.* Spanish speakers also had trouble, with almost 50% reporting the same problem. *Id.* As the study indicates, low-income language minorities had great difficulty accessing services. Likewise, LSC dealing with a similarly situated population constituency should take the difficulties encountered in the welfare agencies as indicative of the problems to accessing its own services.

Further in NAPALC's own report on Asian American Access to Justice, funded by the Open Society Institute, reported that more than 1 in 10 Asian households lack anyone over the age of 14 who is able to speak English well, many Asian Americans have trouble accessing basic legal services and have the most problems accessing legal assistance with immigration, labor, and employment discrimination matters, and many individuals in the Asian community are unaware that there are agencies in their communities that provide low-cost or free legal services, or even if they know, do not try to access the services because of the language barriers. National Asian Pacific American Legal Consortium, *The Search for Equal Access to Justice: Asian American Access to Justice Project Report 3* (2000).

Local experiences attest to the fact that the Asian American community confronts obstacles in accessing mainstream legal service providers due to language barriers. Often, clients are not able to contact legal service agencies to provide information about their legal issues due to the fact that agencies neither employ interpreters nor use a language line. Where clients are able to pass through the intake process, they often find that they are unable to effectively communicate with attorneys due to the absence of translators or interpreters. The result is that many clients have to rely upon friends or family members to help interpret for them, a situation that is undesirable when private legal issues are being discussed; or that clients and legal service attorneys proceed in English, leaving open the possibility that vital information is either missed or poorly conveyed and understood.

In Southern California, LSC-funded organizations are working with one of our affiliates, the Asian Pacific American Legal Center (APALC), to increase access to legal services for low-income, monolingual and LEP Asian immigrants. APALC is the lead agency in a collaborative project (the Asian Language Legal Intake Project or "ALLIP"); the other partners are the Legal Aid Foundation of Los Angeles, Neighborhood Legal Services and Legal Aid Society of Orange County. ALLIP serves monolingual APIs in Los Angeles and Orange Counties through the use of a centralized intake system, including an integrated telephone and web-based database system. There is one dedicated toll-free hotline for each language served (currently Chinese and Vietnamese, expanding this spring to Korean and Cambodian), connecting callers to a bilingual advocate who speaks their language and provides intake, counsel and advice as well as brief services. If a client needs extended representation, they are referred to one of the four partner agencies based on issue and geography. ALLIP provides a more efficient system for intake and allows the legal staff—especially the bilingual attorneys—of the four organizations to focus on extended representation for clients. ALLIP thus allows more LEPs to be served overall, whether through counsel and advice, brief service or extended representation. ALLIP fulfills a critical need because in Los Angeles County, nearly 15% of the Asian and Pacific Islander population overall lives in poverty and for the four targeted communities, poverty rates are higher, ranging from 15 to 46%. However, less than half of those eligible for services have historically accessed legal assistance from one of the local LSC-funded agencies, due to language and cultural barriers. As noted above, the poorest API populations in Los Angeles County also have the highest LEP rates, around 60 to 70%.

Another innovative model is operating in the nation's capitol. The Asian Pacific American Legal Resource Center (APALRC) in the Washington DC metropolitan area has developed methods to provide the linguistic assistance that low-income, limited-English proficient Asian Americans need in order to effectively communicate with legal service providers. The APALRC operates a multilingual legal referral hotline that serves as the entry point into the mainstream legal services system for Asian Americans who are non-English speakers or limited-English proficient. Bilingual volunteers staff the hotline and are able to conduct intake in up to 10 Asian languages. In addition, the APALRC has developed a Legal Interpreter Project (LIP) which recruits and trains community members to serve as interpreters for clients once a referral has been made; legal interpreters interpret for clients and attorneys at meetings and translate written documents. The APALRC has been able to connect Asian Americans in the DC metropolitan area with existing legal service providers over the past five years through the multilingual legal referral hotline and the use of legal interpreters. The APALRC model has been documented in a handbook entitled Developing and Maintaining a Successful Legal Referral Hotline for Immigrant Communities: A How-To Handbook.

The LSC guidance should highlight such model programs that are being developed in immigrant communities, and encourage LSC recipients to work in collaboration with these innovative community-based initiatives. Where such community programs do not exist, it is even more incumbent upon legal service providers then to provide some means of language assistance within their own organizations to ensure that individuals seeking legal service can effectively access their resources. As part of the development of our affiliate APALC's ALLIP project, a promising practices manual will be available in April 2003, reviewing the efforts of a wide range of organizations throughout the county seeking to better assist growing LEP populations with ever limited resources.

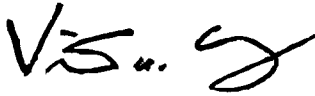
The LSC guidance should highlight such model programs that are being developed in immigrant communities, and encourage LSC recipients to work in collaboration with these innovative community-based initiatives. Where such community programs do not exist, it is even more incumbent upon legal service providers then to provide some means of language assistance within their own organizations to ensure that individuals seeking legal service can effectively access their resources.

A LSC Guidance would neither be inconsistent with its mission, nor would it impose any additional duties to the grantees that it would have under its grants from other federal agencies or state agencies, which either receive or grant Federal financial assistance. The United States Department of Justice has developed a framework that all guidances pursuant to the Executive Order must comport with. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002). As such, a LSC Guidance that complies with the Department of Justice framework would provide LSC grantees a document on how to ensure meaningful access to LEP individuals. Further, because the Department of Justice guidance stressed a four factor test based on reasonableness, it would be more beneficial and consistent for LSC to draft its own Guidance rather than the alternative of "some other form of information sharing that LSC can facilitate among grantees who have been leaders on this issue." Limited English Proficiency Guidance—Request for Comments, 68 Fed. Reg. 1210, 1211 (Jan. 9, 2002 [sic]). And in particular the LSC Guidance would be beneficial to those LSC grantees that "are

grappling with issues relating to serving LEP persons for the first time. Id. Further, given that LSC's mission is to "improve opportunities for low-income people," which encompasses a significant language minority population, a Guidance would only help further that mission. Id. at 1210-11.

We thank you for the opportunities to submit these comments and we look forward to working with LSC in developing its Guidance. I have also attached a copy on NAPALC's report The Search for Equal Access to Justice: Asian American Access to Justice Project Report and NAPALC/APALRC handbook, Developing and Maintaining a Successful Legal Referral Hotline for Immigrant Communities: A How-To Handbook for your review and development of LSC's Guidance.

Sincerely,



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